

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Gregory Scott
Marshall Johnson
Phyllis Reha
Ellen Gavin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

Jason D. Topp
Qwest Corporation
Law Department
200 South Fifth Street, Room 395
Minneapolis, MN 55402

SERVICE DATE: JUN 12 2003

DOCKET NO. P-5340,421/IC-03-425

In the Matter of an Application for Approval of the March 25, 2003 Amendment to the Interconnection Agreement Between Eschelon Telecom of Minnesota, Inc. and Qwest Corporation (Originally Approved in Docket No. P-5340,421/M-99-1223); Containing: 1) Terms, Conditions and Credits for a Settlement Agreement (Sa) Covering Service Credits, Consulting and Network Related Services, Switched Access Minutes, UNE-E Charges and Claims of Anti-competitive Conduct; 2) Terms, Conditions and Rates for Centralized Message Data System (CMDS) Hosting and in Region Message Distribution; and 3) an Addendum to CMDS

The above entitled matter has been considered by the Commission and the following disposition made:

Approved, with the exceptions recommended by the Department of Commerce in its attached comments

This decision is issued by the Commission's consent calendar subcommittee, under a delegation of authority granted under Minn. Stat. § 216A.03, subd. 8 (a). Unless a party, a participant, or a Commissioner files an objection to this decision within ten days of receiving it, it will become the Order of the full Commission under Minn. Stat. § 216A.03, subd. 8 (b).

The Commission agrees with and adopts the recommendations of the Department of Commerce which are attached and hereby incorporated in the Order.

BY ORDER OF THE COMMISSION


Burl W. Haar
Executive Secretary

(S E A L)

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MINNESOTA
DEPARTMENT OF
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MAY 15 2003

May 15, 2003

MN PUBLIC UTILITIES COMMISSION

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: In the Matter of the Application of Qwest Corporation for Approval of the Settlement Agreement, Agreement for CMDS Hosting and Message Distribution for Co-Providers (In-Region with Operator Services), and Addendum to CMDS Hosting and In-Region Message Distribution Agreement for Co-Providers as Amendments to the Interconnection Agreement with Eschelon Telecom of Minnesota, Inc.
Docket No. P5340,421/IC-03-425

Dear Dr. Haar:

Interconnection agreements and amendments to interconnection agreements that are not arbitrated under §252 of the Federal Telecommunications Act of 1996 may be approved without hearing under Minn. Stat. § 216A.03, subd. 7. The Public Utilities Commission's (Commission) Order designating interconnection agreements and amendments to interconnection agreements as subject to a standing order was issued on August 25, 2000 in Docket No. P999/CI-00-634. The use of a standing order is to apply to filings submitted on or after September 1, 2000.

As required by the Commission's August 25, 2000 Order, the Department of Commerce has reviewed and analyzed the current filing. Attached is the Minnesota Department of Commerce's Checklist for processing amendments to interconnection agreements. The Checklist reflects the Department's analysis of the issues and language that the Commission has established to meet the requirements that interconnection agreements or amendments thereto not discriminate against third parties, harm the public interest or conflict with state law.

The petition was filed on:

March 25, 2003

Interconnection Agreement being Amended:

P5340,421/M-99-1223 approved October 4, 1999

Wireless or Wireline:

Wireline

Topic of Amendment:

This amendment contains: 1) terms, conditions and credits for a settlement agreement (SA) covering service credits, consulting and network related services, switched access minutes, UNE-E charges and claims of anti-competitive conduct; 2). terms, conditions and rates for Centralized Message Data System (CMDS) Hosting and in region message distribution; and 3) an Addendum to CMDS.

The Petition was filed by:

Jason D. Topp, Attorney
Qwest Corporation Law Department
200 South Fifth Street, Room 395
Minneapolis, Minnesota 55402

Conditions:

These agreements contain one or more bracketed provisions. The Department disagrees with Qwest's position that the bracketed provisions are 47 U.S.C. § 251(b) and (c) services, and are the only provisions that the Commission has authority to approve under 47 U.S.C. § 252(e). The Minnesota Commission reviews for approval interconnection agreements in their entirety. If, however, the Commission determines that portions of these negotiated agreements are discriminatory to non-parties or are otherwise against the public interest, the Commission has the authority to reject all or part of the agreements. The ability of any CLEC to opt into provisions contained in the document is governed by Sections 252(a), (e) and (i) of the Telecommunications Act.

The Department recommends that the Commission approve these agreements with the exception of Section 8, Dispute Resolution; in the SA amendment and Section 17, Third-Party Beneficiaries; Section 19, Successors: Assignment; Section 21, Dispute Resolution; and Section 22, Amendment, in the CMDS amendment. If the companies want these sections and they do not exist in the underlying agreement, they will have to negotiate an amendment that incorporates the Commission required language and submit it for Commission approval.

The Department's analysis finds that the interconnection agreement complies with the Commission's requirements except as indicated on the attached Checklist. The Department is submitting this memorandum recommending that the Commission **approve** the amendment to the interconnection agreement either at a Commission hearing or by way of the standing order process ordered on August 25, 2000.

Sincerely,


ROGER SCHNEIDER
RATES ANALYST

RS/sm
Attachment

CHECKLIST FOR PROCESSING AMENDMENTS TO INTERCONNECTION AGREEMENTS

ANALITICAL PROCEDURES

A. AMENDMENTS TO INTERCONNECTION AGREEMENTS

- X 1. Amendment modifies an approved interconnection agreement. (Identify docket and date of Order) P5340,421/M-99-1223 Approved October 4, 1999.
2. Amendment addresses language required by the Commission to meet the requirements of 47 CFR 252(e)(2) and (3).
3. The Parties have complied with the Commission's requirement for prior approval of an amendment to an interconnection agreement.¹ (Explain)Qwest seeks prior approval of the bracketed language in these agreements on a going-forward basis. This agreement was previously not filed with the Commission, but it is now being submitted to comply with 252(a) filing requirements.
4. Amendment addresses an issue on which the Commission has established its position.
- Identify the topic:
- a) Language complies with the Commission's position.
Indicate the section and page where this language is found.
- b) Language does not comply with the Commission's preference, but was negotiated and, therefore, meets the statutory requirements.² Indicate the section and page where this language is found. _____

¹ In the Matter of the Application for Approval of the Agreement for Interconnection and Traffic Interchange between Cellular Mobil Systems of St. Cloud, Minnesota L.L.P. and U S WEST Communications, Inc., Docket No. P421/EM-97-437 at page 6.

² In the Matter of the Federal Court Remand of Issues Proceeding from the Interconnection Agreements Between U S WEST Communications and Sprint Spectrum, Triad Minnesota, and Cellular Mobil Systems, ORDER AFTER REMAND APPROVING NEGOTIATED LANGUAGE, P5457,421/M-99-794 dated November 24, 1999 at pages 2 and 3.

X 5. Amendment does not cover a topic on which the Commission has established a precedent.

X a. Identify the topic: These amendments contains 1). terms, conditions and credits for a settlement agreement covering service credits, consulting and network related services, switched access minutes, UNE-E charges and claims of anti-competitive conduct (SA); 2). terms, conditions and rates for Centralized Message Data System (CMDS) Hosting and in region message distribution; and 3). an Addendum to CMDS.

X b. Topic does not threaten the public interest, discriminate against third parties or conflict with state law.

___ 1) Agree (explain).

X 2) Disagree. See Comments A.6.

X 7. Other Comments.

The SA amendment was executed on March 1, 2002. The CMDS amendment and the CMDS Addendum were executed on December 22, 1999. While Qwest previously submitted it to the Department as part of its investigation into Qwest's interconnection agreement filing practices in Docket No. P421/IC-02-197, it is only now being submitted for Commission approval. Although this agreement was not one of the agreements that the Department chose to use as part of its complaint, this should not suggest that Commission approval of this agreement is not necessary. The agreements selected by the Department were limited for the purposes of the contested case process in Docket No. P421/IC-02-197. It is the position of the Department that Qwest has always been obligated to file this agreement.

This agreement contains one or more bracketed provisions. The Department disagrees with Qwest's position that the bracketed provisions are 47 U.S.C. § 251(b) and (c) services, and are the only provisions that the Commission has authority to approve under 47 U.S.C. § 252(e). The Minnesota Commission reviews for approval interconnection agreements in their entirety. If, however, the Commission determines that portions of these negotiated agreements are discriminatory to non-parties or are otherwise against the public interest, the Commission has the authority to reject all or part of the agreements. The ability of any CLEC to opt into provisions contained in the document is governed by Sections 252(a), (e) and (i) of the Telecommunications Act.

In this agreement, the Department has the following concern: Section 8, Dispute Resolution; in the SA amendment and Section 17, Third-Party Beneficiaries; Section 19, Successors: Assignment; Section 21, Dispute Resolution; and Section 22, Amendment in the CMDS amendment do not contain the Commission required language.

The Department believes that the Minnesota Commission should take action that will ensure that the public interest and the rights of CLECs are protected, including the contracting CLEC. Moreover, since this agreement has been and continues to be in effect, the Department believes that it would be disruptive to the CLEC if the Commission were to reject the agreement in its entirety.

The Department recommends that the Commission approve these agreements with the exception of Section 8, Dispute Resolution; in the SA amendment and Section 17, Third-Party Beneficiaries; Section 19, Successors: Assignment; Section 21, Dispute Resolution; and Section 22, Amendment, in the CMDS amendment. If the companies want these sections and they do not exist in the underlying agreement, they will have to negotiate an amendment that incorporates the Commission required language and submit it for Commission approval.

B. RECOMMENDATION OF THE DEPARTMENT

 X 1. Accept the interconnection agreement/amendment.

Conditions: See Comments A.6.

 2. Reject the interconnection agreement/amendment. (Not subject to the standing order.)